**BEFORE THE**
**FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

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| **In the Matter of:**<br>**ACCESS LIMOUSINE SERVICE, INC.,**<br>**Respondent.** | **Docket No. FMCSA-2007-0067**[1]<br>**(Eastern Service Center)** |

**ORDER APPROVING SETTLEMENT AGREEMENT**

On August 30, 2007, the Virginia Division Administrator, Federal Motor Carrier Safety Administration (FMCSA), issued a Notice of Claim to Respondent, Access Limousine Service, Inc., proposing a civil penalty of $6,880 for four alleged violations of the Federal Motor Carrier Safety Regulations (FMCSRs). Specifically, the Notice of Claim, which was based on an August 14, 2007, compliance review (CR), charged Respondent with: (a) three violations of 49 CFR 382.301(a), with a proposed civil penalty of $1,720 per count, for using drivers before having received negative pre-employment controlled substance test results; and (b) one violation of 49 CFR 382.305(b)(2), with a proposed civil penalty of $1,720, for failing to conduct random controlled substance testing at an annual rate of not less than the applicable annual rate of the average number of driver positions.[2]

On September 26, 2007, Respondent replied to the Notice of Claim, denying the allegations and requesting that the civil penalty be reduced to $1,000. Respondent

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[1] The prior case number of this matter was VA-2007-0223-US0631.
[2] See Exhibit A to Claimant's Motion to Enter Default Final Order.

contended that the driver on which the pre-employment drug testing violation was based[3] was hired on a part-time basis while being employed full time at an agency that conducts drug and alcohol testing on all its employees. Respondent stated that it was under the impression that obtaining a copy of the negative drug and alcohol test result from the agency was sufficient and that Respondent was not required to give a pre-employment controlled substance re-test to that driver. In response to the random testing allegation, Respondent maintained that all drivers are placed in a random drug and alcohol testing pool with Norton Medical Industries, with whom Respondent has a contract to conduct random controlled substances testing of all its drivers. Respondent's President also stated that he was not present during the CR (although he had requested that the CR be postponed until he returned), and, therefore: (1) he was not able to address the questions raised by FMCSA's safety investigator (SI); and (2) Respondent's employees were not able to retrieve documents requested by the SI from boxes that had been packed for a move to a different location. Respondent argued that in light of its belief that it "was and is in full compliance with" the regulations, as well as it having no prior history of violations, the civil penalty appeared excessive and unjust, and would cause extreme financial hardship on its business.[4]

On November 20, 2007, Claimant, the Field Administrator for FMCSA's Eastern Service Center, submitted a Motion to Enter a Default Final Order, contending that Respondent had failed to submit an adequate reply in accordance with 49 CFR 386.14. Claimant argued that Respondent: (a) failed to specifically admit or deny the allegations;

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[3] Although there are three different drivers cited for the alleged violation of 49 CFR 382.301(a), Respondent refers only to "this driver." It is not clear whether "this driver" refers to the driver in each of the three counts.

[4] See Exhibit B to Claimant's Motion to Enter Default Final Order.

(b) did not include any affirmative defenses; (c) did not include payment or seek administrative adjudication or arbitration; and (d) failed to state whether it was choosing to submit written evidence without a hearing, a formal hearing, or an informal hearing.[5]

On January 2, 2008, Respondent answered the Motion to Enter a Default Final Order, stating that, pursuant to the Notice of Claim, it had twice contacted Claimant's office to inquire about a possible settlement with an enforcement specialist. The only response received was that the request for settlement must be in writing.[6] Respondent again provided its reasons for concluding that the $6,880 was too high; it further stated that it had timely replied to the Notice of Claim, and, unlike Claimant, it had shown good faith in attempting to settle the matter.

On January 29, 2009, Claimant submitted a Notification of Settlement and Motion to Close Docket, stating that all pending issues had been resolved. Claimant requested that the proceeding be dismissed and the docket be closed. Under the Settlement Agreement, which was executed by Respondent on January 7, 2009, and by Claimant on January 15, 2009, and adopted as a Final Order,[7] Respondent agreed to pay $6,000 in six

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[5] Respondent's Reply would not have constituted a default. Although Respondent did not participate in the exact manner envisioned by the revised Rules of Practice, it nonetheless participated in the proceedings in a meaningful way. *See In the Matter of Thomas E. McGonigle*, Docket No. FMCSA-2008-0072, Order Denying Motion for Default and Requiring Claimant to Submit Evidence, June 27, 2008, at 3.

[6] The Notice of Claim states: "(c) Contact an Enforcement Specialist outlining in writing compelling reasons why the assessed penalty should be reduced and discuss potential settlement." Respondent did that in its Reply to the Notice of Claim, even addressing the Reply to the Enforcement Specialist. Moreover, the Notice of Claim provides the telephone number of the Enforcement Specialist, presumably so that the parties can discuss by telephone what Respondent stated in its Reply concerning settlement. See paragraph (1), page 4.

[7] See Settlement Agreement, paragraph 8; 49 CFR 386.22(a)(1)(vii).

equal monthly payments beginning January 23, 2009.[8] The parties agreed that execution of the Settlement Agreement constitutes an admission of the violations set forth in the Agreement, which were the same violations alleged in the Notice of Claim. With the exception of two sentences that are being voided by this Order,[9] the Settlement Agreement is in the public interest.

Accordingly, *It Is Hereby Ordered That* Claimant's request is granted, the Settlement Agreement is the Final Order in this proceeding, the proceeding is dismissed, and the docket is closed.

Rose A. McMurray
Assistant Administrator
Federal Motor Carrier Safety Administration

10.1.09
Date

[8] See Settlement Agreement, paragraph 6, for the monthly payment amounts and their due dates.

[9] The second and third sentences of paragraph 8 are void. *See In the Matter of Golden Eagle Transit, Inc.*, Docket No. FMCSA-2009-0044, Final Agency Order: Order on Reconsideration, July 10, 2009, at 7.

**CERTIFICATE OF SERVICE**

This is to certify that on this 2 day of October, 2009, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

| | |
|---|---|
| Kevin Shokraei<br>Access Limousine Service, Inc..<br>4600 Duke Street, Suite 300<br>Alexandria, VA 22304 | One Copy<br>U.S. Mail |
| Anthony G. Lardieri, Esq.<br>Trial Attorney<br>Office of Chief Counsel (MC-CCE)<br>Federal Motor Carrier Safety Administration<br>Eastern Service Center<br>802 Cromwell Park Drive, Suite N<br>Glen Burnie, MD 21061 | One Copy<br>U.S. Mail |
| Robert W. Miller, Field Administrator<br>Federal Motor Carrier Safety Administration<br>Eastern Service Center<br>802 Cromwell Park Drive, Suite N<br>Glen Burnie, MD 21061 | One Copy<br>U.S. Mail |
| Craig Feister<br>Virginia Division Administrator<br>Federal Motor Carrier Safety Administration<br>400 North 8th Street, Suite 780<br>Richmond, VA 23240 | One Copy<br>U.S. Mail |
| U.S. Department of Transportation<br>Docket Operations, M-30<br>West Building Ground Floor<br>Room W12-140<br>1200 New Jersey Avenue, S.E.<br>Washington, D.C. 20590 | Original<br>Personal Delivery |

Jennie Miller